in area, within the Town Board area and about 3½ miles from Kuantan town centre, less than half a mile from the Jalan Telok Chempedak junction and about ¾ mile from Telok Chempedak beach. The R.I.M.V. office, the Assunta Convent, the Istana Mahkota, the Mentri Besar's residence and the golf club are all within a half miles radius of the land.

It has a frontage of about 250 feet onto Jalan Tengku Muhammad. At the frontage it is about level with the road; it then rises to the rear, and the highest point offers a panoramic view of Kuantan. At the material date it was undeveloped and covered with blukar, but piped water and electricity were available along the road.

The area in general is zoned as low density residential and there is subdivision of a few lots in the locality.

The land has been approved for hotel development and the title has been converted. It is this last that is said to make the land particularly valuable.

Encik Ahmad Shah Balendran on behalf of the owners before us stressed that the land is comparable not so much with the many lots mentioned by the learned judge, but more with lands approved for hotel development and he mentioned two such lots No. 2185 and 2186 along Jalan Telok Chempedak across the way from the Istana Mahkota.

The evidence was that Lot 2185, 2.3125 acres in area, was sold in 1971 at $15,000 per acre; in November 1973 (i.e. about six months after the material date), at $56,216 per acre (about $1.30 per sq. ft.); and in December 1973, for a proposed hotel at $261,357 per acre (about $6 per sq. ft.); and Lot 2186 next door, 2.28 acres in area, was sold in February 1974, at $196,000 per acre (about $4.50 per sq. ft.). Approval to build a hotel on these two lots has been granted, but the titles have not yet been converted. It is said that based on the price paid for them the subject-land should be worth not the $50,000 an acre awarded by the learned judge, but $3 per sq. ft. ($130,680 per acre).

With respect the learned judge did consider the sale prices of Lots 2185 and 2186; but the court was concerned with price at the material date May 24, 1973; and Lot 2185 fetched only $56,216 per acre about six months later, though it is better situated, being along the Jalan Telok Chempedak on the way to the beach and right near Istana Mahkota, the Rest House and the Golf Club. It is true that about two months later it fetched $261,357 per acre and the adjoining lot $196,000 per acre; but, according to the private valuer called by the owners, between 1973 and February 1974 was a period of land boom in Kuantan when prices tended to be speculative.

Another factor that tends to depress the price of the subject lot is that the viability of a hotel on his land is only a long term prospect, as is evidenced by the fact that though the owners obtained approval for the land to be used for hotel development in December 1970, it remained undeveloped at the material date — as is also the case with Lots 2185 and 2186, to this day, seven years later. This may be due to competition with hotels already at Telok Chempedak beach, in particular the two international class hotels already referred to.

It cannot be said that the learned judge overlooked the fact that this land should be valued as land approved for hotel development, for he valued the two adjoining and similar lots Nos. 2182 and 2183 at $28,000 and $27,000 per acre respectively. He valued the subject lot at almost twice each of these two lots.

We have considered carefully the learned judge's reason for his award. In our judgment he has applied the right principles and has not acted on wrong principles; he has not misapprehended the facts which he detailed and weighed at length; nor has he made a wholly erroneous estimate of the value of the land.

For the above reasons we would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Balendran & Chong.*

SYARIKAT PERNIAGAAN SELANGOR SDN. BHD v. FAHRO ROZI MOHDI & ORS.

[F.C. (Chang Min Tat, Salleh Abas & Abdul Hamid F.JJ.) January 12 & 30, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 204 of 1978]

Torts — Injunction — Nuisance from noise — Music bands and discotheque — Injunction granted.

The respondents had brought an action against the appellant to prevent it from so using its land as to cause annoyance by noise to the neighbouring landowners. They applied for an injunction to restrain the appellant or its servants from operating or permitting to operate (a) music bands with singers from open air stages and (b) the generator for the discotheque on its land until the trial of the action or until further order. The learned trial judge granted the injunction and the appellant appealed.

Held, dismissing the appeal: the learned trial judge was entitled on the evidence to find that the noise was excessive and intolerable and was an actionable nuisance and that the respondents were entitled to the injunction.

Case referred to:-

(1) *Kennaway* v. *Thompson* [1980] 3 W.L.R. 361, 366.

FEDERAL COURT.

C.F. Chin for the appellant.

Chong Kok Hon for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. delivering the judgment of the Court): This is an appeal from the decision of the High Court to grant an injunction against the appellant to prevent it from so using its land as to cause annoyance by noise to the neighbouring landowners. Specifically, the order restrains the appellant and its servants and agents from operating or permitting to operate (1) music bands with singers from open air stages and (2) the generator for the discotheque on its land until the trial of the action or until order. Behind the first limb of the order is clearly the electronic amplification of live music and songs.

Save in one respect, the open-air cinemas, this order is substantially what the respondents in their joint action have asked for. The judge made the order for an injunction in the full realisation of this.

The appellant holds a lease over nearly 8½ acres of land which includes a lake. The conditions of use are stated in the lease to be:

"Syarat-syarat Nyata:

Tanah yang dikeluarkan milik ini hanya boleh digunakan untuk Komplek Pelancongan (Skating ring, restaurant, drive-in-cinema), dan tidak boleh digunakan untuk lain-lain tujuan melainkan dengan mendapat kebenaran daripada Pihak Berkuasa Negeri."

In English, it means that the land which has been given the title can only be used as a tourist complex (skating rink, restaurant, drive-in cinema), and cannot be used for other purposes except with the consent of the State Authority.

Despite the clear restriction of use to a skating rink, restaurant and a drive-in cinema and the express prohibition of any other use, the appellant built an open-air stage on the lake on which a music band and sometimes two music bands operated with live singers. It also floated a junk as a discotheque, which as we understand this modern term, is a place for the reproduction of recorded music. As we have observed earlier on, it is reasonably certain that amplifiers were used, the sounds were greatly magnified and carried over a greater distance than they would, unassisted, do, from the users' point of view, to attract customers, but alas, from the neighbours' point of view, to constitute an annoyance.

Noise in urban society there inevitably will be. Anyone living in town must expect to have to put up with a certain volume of noise from his neighbours and he, in turn, must have the right to make a certain amount of noise in the enjoyment of his property. But it is just as clear that no one has the right to create a volume of noise of such intensity and no one should be asked to put up with such a volume which by any reasonable standard becomes a nuisance.

As Lawton L.J. says in *Kennaway* v. *Thompson*[1] at page 366: "Now nearly all of us living in these islands have to put up with a certain amount of annoyance from our neighbours. Those living in towns may be irritated by their neighbours' noisy radios or incompetent playing of musical instruments and they in turn may be inconvenienced by the noise created by our guests slamming car doors and chattering after a late party. Even in the country the lowing of a sick cow or the early morning crowing of a farmyard cock may interfere with sleep and comfort. Intervention by injunction is only justified when the irritating noise causes inconvenience beyond what other occupiers in the neighbourhood can be expected to bear. The neighbour who is complaining must remember, too, that the other man can use his property in a reasonable way and there must be a measure of give and take, live and let live."

The appellant's first contention that as the registered and legal owner of the land, it can use its land in any manner it pleases it to use, no matter what the effect on the neighbours may be, is unsupportable by law or reason or good sense and must be rejected outright. Except to the deaf or hard of hearing or to those to whom noise has no appreciable significance or to those to whom the noise they deliberately create means the clicking of their money tills, noise above a certain level becomes a nuisance and can be stopped by the inherent powers of the court to regulate the lives of the people.

The three respondents have put themselves on affidavit about the noise created by the appellant on the open-air stage and discotheque. They come from various walks of life. They complain that the level of the noise is intolerable. One of them had already lost a good tenant who would not have moved out of the premises but for the noise, night after night. The appellant appeared at first to have conceded that the noise level was too high and was prepared to be conciliatory. It agreed to moderate the re-production of the sounds but the respondents found no moderation or even relief.

Mr. Chin who appeared for the appellant both in the High Court and before us submitted that the test was whether the noise was excessive. He would appear to have based his contention that it was not because of the distance separating the respondents' houses from the sources of noise. But he made no concession to the amplification of the noise by electronic means, a process to which there appears to have no limitation and which would make nonsense of the distance of between 100 and 200 yards that lay between the houses and the sources. The learned judge accepted the evidence as establishing that the noise is intolerable and was an actionable nuisance.

We agree and we dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Chin & Co.; Chong Kok Hon & Co.*

MALAYAN BANKING BHD. v. FOO SEE MOI

[F.C. (Chang Min Tat, Salleh Abas & Abdul Hamid F.JJ.) January 12 & February 16, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 135 of 1979]

Banking — Overdraft account — Judgment obtained for sum owing and interest — Compound interest — Application for execution more than six years after judgment — Whether leave should be granted.

Evidence — Letters written without prejudice — Agreement arrived at — Admissibility.

Practice and Procedure — Application for execution more than six years after judgment — Whether leave should be granted — R.S.C. 1957, O. 42 r. 23.

The appellant had obtained final judgment in default of defence against the respondent for the sum of $674,539.53 with interest. There was subsequent correspondence between the parties and it was agreed *inter alia* that the respondent should pay $850,000 in full settlement, out of which $700,000 was to paid forthwith and the balance by instalments. The sum of $800,000 was paid, leaving a balance of $50,000 outstanding. The respondent asked for time to pay and it was not till May 10, 1978 that the appellant rescinded the agreement and demanded payment of the balance and interest which stood at $187,401.10. As more than six years had elapsed from the judgment the appellant applied for leave to levy execution. The application was dismissed in the High Court and the appellant appealed.